

IP 05-0057-CR 1 T/F USA v Brown  
Magistrate Kennard P. Foster

Signed on 2/21/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
BROWN, SYLVESTER,	)	CAUSE NO. IP05-0057-CR-01-T/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 05-57-CR-01 (T/F)
	)	
SYLVESTER BROWN,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on February 9, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on February 3, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on February 21, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Brown appeared in person and his appointed counsel, Bill Dazey, Office of the Indiana Federal Community Defender’s Office. The government appeared by Jim Warden, Assistant United States Attorney. U. S. Parole and Probation appeared by Dwight Wharton, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Bill Dazey, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Brown in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Brown and his counsel who informed the Court they had read and understood the specification of violations charged herein and waived further reading thereof.

3. That Mr. Brown was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Brown would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Brown had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Brown had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on February 9, 2006.

7. Mr. Brown stated his readiness to waive the preliminary hearing. Mr. Brown then waived, in writing, the preliminary hearing and he was held to answer.

8. Mr. Brown, by counsel, stipulated that he admitted the specified violations of his supervised release, as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed on February 3, 2006, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<b>The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.</b>

On November 26, 2005, the defendant submitted a urine specimen that subsequently tested positive for marijuana. On November 30, 2005, he was confronted about drug usage and Mr. Brown readily admitted he last used marijuana on November 25, 2005. The defendant was verbally reprimanded and re-enrolled in weekly urine surveillance at the Volunteers of America. He had completed eight months of substance abuse counseling on November 28, 2005. Mr. Brown adamantly denied he was in need of further counseling and it was believed he would not be responsive to additional substance abuse treatment. Following his admission of marijuana use, the defendant was advised halfway house placement would be sought should he continue using illegal drugs.

Since that time, Mr. Brown submitted urine specimens that were positive for marijuana on the following dates: 11/30/05; 12/5/05; 12/15/05; 12/21/05; 12/28/05; 1/12/06; 1/19/06; 1/26/06; and 1/30/06. On January 30, 2006, he reported to the probation officer as instructed and admitted ongoing use of marijuana. The defendant stated he last ingested the drug on or about December 23, 2005, despite warnings that ongoing use would result in harsh sanctions. Mr. Brown was advised the drug test results indicated his last use of marijuana occurred after the date he provided. Despite the evidence of laboratory results and the maximum 30-day life of THC metabolites in urine, the defendant denied any marijuana usage since December 23, 2005.

Counsel for the parties further stipulated the following:

- 1) Mr. Brown has a relevant criminal history category of I. *See*, U.S.S.G. §7B1.4(a).

2) The most serious grade of violation was stipulated to by the parties to be a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).

3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Bryant is 3-9 months.

4) The appropriate disposition for Mr. Brown's violation of the conditions of supervised release is **MODIFICATION** of his conditions of release as follows:

(a) For up to 180 days, Mr. Brown shall reside at the Indianapolis Community Corrections center, namely, the Volunteers of America, in accordance with its rules and regulations, when designated by the Bureau of Prisons.

(b) Beginning immediately, Mr. Brown shall submit to the search (with the assistance of other law enforcement as necessary) of his person, vehicle, office/business, residence and property, including computer systems and its peripheral devices. The defendant shall submit to the seizure of contraband found. The defendant shall warn other occupants the premises may be subject to searches.

(c) Upon completion of Mr. Brown's housing at the Volunteers of America, he shall continue on supervised release under the previously-ordered conditions of supervised release entered by the Court, with the addition of (b) above.

9. The Court then placed Mr. Brown under oath and inquired directly of him whether he admitted committing violations of supervised release contained in the Petition to Revoke Supervised Release. Mr. Brown admitted the violations.

The Court, having heard the admissions of the defendant and the stipulations of parties and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated conditions of his supervised release. The defendant's supervised release is therefore **MODIFIED** and Sylvester Brown's supervised release shall continue as previously set, with the following modifications:

(1) He will reside at the Volunteers of American for a period of up to 180 days, in accordance with the rules and regulations as set by the U. S. Parole and Probation Office for the Southern District of Indiana.

(2) Beginning immediately, Mr. Brown shall submit to the search (with the assistance of other law enforcement as necessary) of his person, vehicle, office/business, residence and property, including computer systems and its peripheral devices. The defendant shall submit to the seizure of contraband found. The defendant shall warn other occupants the premises may be subject to searches.

(3) Upon completion of Mr. Brown's housing at the VOA, he shall continue on supervised release under the previously-ordered conditions of supervised release entered by the Court, with the addition of (2) above.

**WHEREFORE**, Mr. Brown's supervised release is **MODIFIED** as set forth above.

Counsel for the parties and Mr. Brown stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

**WHEREFORE**, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Mr. Brown's supervised release.

**IT IS SO RECOMMENDED** this 21<sup>st</sup> day of February, 2006.

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Kennard P. Foster, Magistrate Judge  
United States District Court  
Southern District of Indiana

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